S.B.Civil writ Petition No.1548/2007
Shri Nena & Ors.
vs
The ADJ (Fast Track), Rajasmand & Anr.

Date of order : 15.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.SP Sharma, for the petitioners.
Mr.KK Shah, for the respondent no.2.

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Heard learned counsel for the parties.

The petitioners are aggrieved against the order of the trial court dated 15.2.2007 by which the trial court when the evidence of the parties was going on, proceeded to decide objection about the admissibility of the part of the statement of some witnesses and held that certain parts of the affidavits of the witnesses, plaintiff Nena, plaintiff Chhitar, witness Bheru Singh and witness Kishna are not admissible in evidence because no oral evidence can be led with respect to a fact, which has been reduced in writing.

According to learned counsel for the petitioners by this order, the trial court has virtually deleted certain part of the affidavits of the plaintiffs and plaintiffs' witnesses which is wholly impermissible in law. It is also submitted that in view of the proviso to sub-rule (4) of Rule 4 of Order 18 all

objections raised during recording of the evidence before the Commissioner are required to be decided by the court at the stage of arguments only and the trial court committed error of law by entertaining and deciding the objection at the stage when evidence was going on.

Learned counsel for the respondent no.2 vehemently submitted that the petitioners' own case was that there is written agreement and the petitioners led evidence with respect to the terms of that written agreement in violation of Section 91 of the Evidence Act. Since the statements of the plaintiffs and plaintiffs' witnesses were inadmissible in evidence in view of bar of section 91 of the Evidence Act, the trial court has not committed any error of law. It is also submitted that the trial court has not deleted any part from the affidavits of the plaintiffs or plaintiffs' witnesses.

I considered the submissions of learned counsel for the parties and perused the facts of the case as well as impugned order and the reasons given by the trial court.

The Civil Procedure Code was amended in the year 2002 and the procedure of recording of evidence through Commissioner was introduced and has been made applicable to all cases. In view of the above

amendment specific provision was made about the objections, which can be raised during recording of evidence before the Commissioner and anticipating that because of frivolous or unnecessary objections during recording of evidence, the proceedings should not be deferred even by Commissioner and the court should pass the appropriate order at the stage of arguments only so as to avoid unnecessary multiplicity of the proceedings and delaying the trial of the suit. For specific purpose, the proviso was enacted under sub-rule (4) of Rule 4 of Order 18, which provides as under : -

> "Provided that any objection raised during recording of evidence before the Commissioner shall be recorded by him and decided by the court at the stage of arguments"

In this case, admittedly, the objection was decided by the trial court before the stage reached for deciding the objection thereby the whole purpose for enacting the proviso to sub-rule (4) of Rule 4 of Order 18 stands frustrated resulting into passing of the order by the trial court during the stage of recording of evidence of the plaintiffs and multiplication of proceedings by compelling one party to challenge the order by preferring the writ petition. Therefore, solely on this ground alone, the

impugned order deserves to be set aside and the courts are expected to follow the procedure as prescribed for in the proviso of sub-rule (4) of Rule 4 of Order 18.

In view of the above, the writ petition of the petitioner is allowed and the order of the trial court dated 15.2.2007 is set aside only on the above ground alone. However, the trial court may pass appropriate order on the objection raised by the non-petitioner about the admissibility of the oral evidence. While doing so, the trial court will pass appropriate order uninfluenced by the earlier order and after hearing both the parties on objection.

(PRAKASH TATIA), J.

c.p.goyal/-